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No. 99–1781

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1999

JAMES E. PIETRANGELO, II, PETITIONER,

v.

UNITED STATES SENATE, ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS UNITED STATES SENATE, ET AL. IN OPPOSITION TO THE PETITION FOR CERTIORARI

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MAY 2000.

QUESTIONS PRESENTED

1. Whether the court of appeals erred in affirming the district court's application of the Speech or Debate Clause (art. I, sec. 6, cl. 1) to dismiss this action, which seeks to question the Senate and its Members about their votes in President Clinton's impeachment trial.

2. Whether plaintiff's lack of Article III standing and the constitutional commitment to the Senate of the sole power to try impeachments (art. I, sec. 3, cl. 6) provide alternative bases for dismissing this action challenging the Senate's acquittal of President Clinton.

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Respondents United States Senate and all Members of the Senate submit this brief in opposition to the petition for a writ of certiorari filed by petitioner James E. Pietrangelo, II.

STATEMENT OF THE CASE

This petition arises out of a complaint filed in the United States District Court for the Northern District of Ohio on February 10, 1999, while the Senate, pursuant to Article I, Section 3, Clause 6 of the Constitution, was trying the impeachment of President Clinton. The complaint sought declaratory and injunctive relief concerning the Senate's conduct of the impeachment trial. Three weeks after the Senate acquitted the President and adjourned the trial, the plaintiff amended his complaint to add all Senators as defendants and to challenge particular Senators' votes on the two articles of impeachment.

Specifically, the plaintiff alleged that at least thirty-two Senators who voted "not guilty" nevertheless demon-

strably believed, as evidenced principally by their support of a resolution of censure, that the President in fact had committed the offenses charged by the House of Representatives in the articles of impeachment. Amended Complaint at 4. On this basis the plaintiff sought a declaratory judgment that the Senate had "actually convicted" President Clinton. *Id.* at 8. The plaintiff predicated his standing on assertions that the Senate's acquittal of the President had deprived the plaintiff of his rights, as a citizen, to the "rule of law, equal protection and justice, due process, and democracy." *Id.* at 6, 7, 8.

Acting *sua sponte*, the district court dismissed the amended complaint on March 17, 1999, on the basis that the Constitution's Speech or Debate Clause, Article I, Section 6, Clause 1, affords Members of Congress absolute immunity for their votes. App. to Cert. Petition at 4a. The plaintiff then noticed an appeal to the United States Court of Appeals for the Sixth Circuit. While his appeal was pending, the plaintiff filed a petition for certiorari before judgment, which this Court denied on June 14, 1999. *Pietrangelo v. United States Senate*, 119 S. Ct. 2359 (1999) (No. 98–1790). On March 31, 2000, the Sixth Circuit affirmed the district court's dismissal "upon the reasoning employed by that court." App. to Cert. Petition at 2a. This second petition for certiorari timely followed on May 9, 2000.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari should be denied because it fails to provide a "compelling reason," Sup. Ct. Rule 10, for this Court to review the judgment of the court of appeals. The Sixth Circuit properly affirmed the district court's inescapable determination that the Speech or Debate Clause provided an absolute bar to this lawsuit. Had the Speech or Debate Clause not provided a basis for dismissing this action, principles of both Article III standing and the political question doctrine would also have prohibited reaching petitioner's claims. The clear application of these settled legal principles means that this

case does not present the sort of unresolved "important question of federal law" that should be "settled by this Court" through a grant of certiorari. *Id.*

I. The Speech or Debate Clause provides that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. Const. art. 1, § 6, cl. 1. The amended complaint alleges that thirty-two Senators violated their constitutional oath when they voted "not guilty" on the two articles of impeachment then pending before the Senate. This claim patently seeks to question Members of the Senate about their votes in exercising their exclusive constitutional duty "to try all Impeachments." U.S. Const. art. 1, § 3, cl. 6.

Contrary to petitioner's assertion that the applicability of the Speech or Debate Clause to Members' votes in an impeachment proceeding is an "open" question, Cert. Petition at 14, the Court has long recognized that legislative immunity absolutely protects from civil liability Members' "act of voting." *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881); *accord Gravel v. United States*, 408 U.S. 606, 624 (1972). Voting in an impeachment trial is "an integral part of the deliberative and communicative processes by which Members participate in . . . House proceedings . . . with respect to other matters which the Constitution places within the jurisdiction of either House." *Id.* at 625.

Accordingly, in affirming the district court's dismissal of this case based on the Constitution's "'absolute immunity to members of Congress for [] voting,'" App. to Cert. Petition at 4a (quoting *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir.), *cert. denied*, 474 U.S. 1005 (1985)), the Sixth Circuit correctly joined the other courts that have recognized that "[t]he Speech and Debate Clause prevents us from questioning Congress about actions taken in the impeachment process." *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1446 (11th Cir. 1987); *accord Hastings v. United States Senate, Impeachment Trial Committee*, 716 F. Supp. 38, 42 (D.D.C.)

(Gesell, J.), *aff'd on other grounds*, 887 F.2d 332 (D.C. Cir. 1989) (table).

II. The district court and the court of appeals properly disposed of this case based upon legislative immunity because the Speech or Debate Clause protects Members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam); *see Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 511 n.17 (1975). Had the Speech or Debate Clause not provided respondents with absolute immunity, both principles of Article III standing and the political question doctrine would have independently precluded this action.

On its face, petitioner's asserted injury—that respondents deprived him of his rights as a citizen to the "rule of law, equal protection and justice, due process, and democracy," Amended Complaint at 6, 7, 8—exemplifies a "generalized grievance[] about the conduct of government" that fails to satisfy the requirements of Article III. *Flast v. Cohen*, 392 U.S. 83, 106 (1968); *see Allen v. Wright*, 468 U.S. 737, 751, 753–56 (1984); *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Suing as a self-described "mere 'citizen,'" Cert. Petition at 6, petitioner's expressions of concern about "government corruption and lawlessness," *id.* at 5, and protecting "the very foundation of our democracy," *id.* at 4, are precisely the sort of allegations of "abstract injury in nonobservance of the Constitution" that the Court has held insufficient to confer standing under Article III. *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 220–27 & n.13 (1974). The district court therefore lacked jurisdiction over the complaint.

Further, petitioner's request for judicial review of Senators' votes in an impeachment trial presents a nonjusticiable political question, given the Constitution's "textually demonstrable constitutional commitment," *Baker v. Carr*, 369 U.S. 186, 217 (1962), to the Senate of the "sole Power to try all Impeachments," U.S. Const. art. 1, § 3, cl. 6. *See Nixon v. United States*, 506 U.S. 224 (1993).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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